

IN THE MATTER OF LICENSE NO. 336715  
MERCHANT MARINER'S DOCUMENT NO. Z-559459-D1  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Robert E. BONVILLIAN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1948

Robert E. BONVILLIAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 28 May 1971, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as Third Assistant Engineer on board SS GREEN COVE under authority of the document and license above captioned, Appellant on or about 13 September, 29 October, 1 and 2 November, 25, 26, 27, 28, 29, 30, and 30 (Date Line Day) November, and 1, 2, and 3 December 1970, failed to perform his assigned duties, and, on or about 29 October 1970, wrongfully had in his quarters a quantity of liquor.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of GREEN COVE.

In defense, Appellant testified in his own behalf.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specifications had been proved. He then entered an order suspending all documents issued to Appellant for a period of three months on twelve months' probation.

The entire decision was served on 7 June 1971. Appeal was perfected on 2 December 1971.

FINDINGS OF FACT

On all dates in question, Appellant was serving as Third Assistant Engineer on board SS GREEN COVE and acting under authority of his license and document. On all dates alleged, Appellant wrongfully failed to perform his assigned duties, and on 29 October 1970 Appellant wrongfully had nine bottles of liquor in his possession in his room.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that Appellant's counsel failed to obtain testimony from several important witnesses and that Appellant's own description of conditions aboard the vessel amply justify his conduct. It is said also that an earlier Master permitted liquor aboard the vessel.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

While the witnesses whose presence Appellant would now, apparently, like to obtain could not, on the showing made of their expected testimony, testify as to anything on the merits of the case or by way of mitigation, Appellant cannot be heard, months after the hearing was held, to impeach the activity of counsel of his own selection.

Rejection of counsel of one's own choice, in the event of disagreement or dissatisfaction, must be timely.

##### II

Appellant's principal contention is that a history of harassment led to his frequent failures to perform his duties as a licensed officer. Mere repetition of what Appellant said at the hearing, or even a more detailed elaboration thereof, when the Administrative Law Judge has had ample opportunity to weigh the evidence and arrive at findings that are not made arbitrarily or capriciously is not enough.

Not only is Appellant's asserted explanation not overwhelming, it is not even relevant as an excuse for the admitted frequent failures to perform duties. Appellant's complaints could well have been expressed to consuls or others. Failure to work was not a legitimate form of protest.

##### III

As to the liquor, which Appellant admits he had aboard, it is no defense that another Master on another voyage, even of the same vessel, properly or improperly permitted some persons to have liquor aboard. The standard shipping agreement used in the instant case provided a ban on liquor and the Master on the voyage in question enforced it.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 28 May 1971, is AFFIRMED.

T. R. SARGENT  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D. C., this 18th day of June 1973.

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